

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLENE ROYCE, as parent and guardian of:
TIFFANY M. WHEELER, a Minor,

Plaintiff,

v.

THOMAS R. WHEELER, LISA W.
HUZELLA, and MICHAELON A. WRIGHT,
each individually and as acting successor trustee
of the Thomas M. Wheeler Revocable Trust, u/a
dated April 9, 1986, as Amended and Restated,
43 WEST 64TH STREET LLC, a Michigan
corporation, and WHEELER FAMILY
FOUNDATION, INC., a Delaware nonprofit
corporation,

Defendants,

– and –

KRYSTAL WHEELER,

Nominal Defendant.

Civil Action No.: 07-CV-10968 (RWS)

AFFIDAVIT OF
ROBERT T. HOWARD

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

ROBERT T. HOWARD, being duly sworn, hereby deposes and says:

1. I am the President and Chief Executive Officer (“CEO”) of TMW Enterprises Inc. (“TMW Enterprises”), located at 201 West Big Beaver, Suite 201, Troy, Michigan 48084. I have known Thomas M. Wheeler (“Mr. Wheeler” or the “Decedent”) for approximately 17 years, and have been a business associate during that time.

2. I submit this affidavit in support of the Defendants' Motion to Dismiss the above-captioned action for lack of subject matter jurisdiction. I base this affidavit upon my personal knowledge and a review of relevant records and public filings. I am not related to the Decedent and I am not entitled to receive any portion of his Estate or Trust.

Mr. Wheeler's Business Interests and Contacts with Texas

3. Mr. Wheeler ("Mr. Wheeler" or the "Decedent") died in West Palm Beach, Florida, on February 9, 2007.

4. Prior to his death, Mr. Wheeler was domiciled in and owned property in El Paso, Texas, where he had his primary residence.

5. Mr. Wheeler was a businessman and entrepreneur. Mr. Wheeler started the company now known as TMW Enterprises (formerly known as Electro-Wire Products, Inc. ("Electro-Wire") in the early 1980's. From the inception of Electro-Wire and up until the time of his death, Mr. Wheeler served as the Chairman or Vice Chairman of the company. Mr. Wheeler, through the Thomas M. Wheeler Trust, arising under agreement originally dated April 9, 1986, as amended and restated thereafter (the "Trust"), owned approximately 70% of the issued and outstanding stock of TMW Enterprises.

6. From inception through the sale of principally all of the operating assets in 1995, the company maintained its principal manufacturing headquarters in El Paso, Texas. From this base of operations, the company operated 8 plants in Mexico, three in El Paso and approximately 5 others around the U.S. and one in Canada. At the time of the sale in 1995, the company employed over 6,000 employees. As a result of the sale, the company maintained the real estate used in the operations of the manufacturing business and only 6 employees remained with Mr. Wheeler.

7. As of the date of this affidavit, certain of those manufacturing plants still exist (primarily the plants in Mexico) and are leased to third parties, but are "locked"

inside the corporate structure that existed when the company had operations. This structure is not easily liquidated as it consists of TMW Enterprises, which is a subchapter "S" corporation, owning an U.S. "C corporation", which in turn owns three Mexican corporations, which in turn own the eight plants in Mexico.

8. After Mr. Wheeler sold the core operations of Electro-Wire in 1995, the successor company was renamed TMW Enterprises. TMW Enterprises is engaged in a variety of business and real estate ventures.

9. After 1995 and separate from TMW Enterprises, Mr. Wheeler and his Trust were involved in different business activities, including the acquisition of certain businesses in El Paso, Texas, which were subsequently combined into what is today known as Millennium Plastics Technologies, LLC ("Millennium"). Millennium employs approximately 100 people and operates from leased facilities in El Paso, Texas. The Trust has made financial accommodations to and for the benefit of Millennium over the years.

10. Mr. Wheeler and/or his Trust were involved in construction and development activities, including a development of approximately 225 residential apartments in El Paso, Texas, and a development of approximately 275 residential apartments in Alamogordo, New Mexico.

11. Up until his death, Mr. Wheeler was actively involved in the business and management of the operations of TMW Enterprises and his personal wealth, which included assets in the Trust.

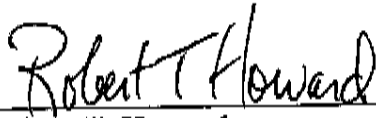
12. Mr. Wheeler frequently communicated from his home in El Paso, Texas. During the 17 years until his death, Mr. Wheeler and I have had numerous discussions regarding the operations of TMW and his Estate and Trust planning. During the month of January 2007 I participated in a number of telephone conversations with Mr. Wheeler

(and sometimes, with others) from his temporary location in Arizona wherein pending business matters were discussed, including strategy discussions concerning continuing matters associated with a recent asset disposition.


* * * * *

The above facts are true and correct, to the best of my knowledge, information and belief.

DATED: Troy, Michigan
March 14, 2008


Robert T. Howard

Sworn to and subscribed
before me this 14th day of March, 2008.


Notary

TINA SMARCH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 8, 2008
Acting in the County of _____